

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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IN RE:

BKY. NO. 03-47881

PAUL BRIAN MORTENSEN AND  
ANGELA CHRISTINE MORTENSEN,

DEBTOR(S).

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BANK ONE DELAWARE, NA F.K.A FIRST USA,

ADV. NO. 04-4061

PLAINTIFF(S),

V.

**ANSWER**

PAUL BRIAN MORTENSEN,

DEFENDANT(S).

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COMES NOW, Paul Brian Mortensen, and as for his Answer to Plaintiff's Complaint, states, alleges and represents to the Court as follows:

I.

Defendant denies all of the allegations contained in Plaintiff's Complaint except as hereinafter specifically admitted, explained, qualified or otherwise answered.

II.

Defendant specifically denies all of the allegations of conversion, misrepresentation, fraud, implied promises, implied intentions and implied representations as alleged in Plaintiff's Complaint or otherwise.

III.

Defendant admits the allegations contained in paragraphs one (1) and two (2) of

Plaintiff's Complaint.

IV.

Defendant is without information sufficient to either admit or deny the allegations contained in paragraphs three (3), four (4) and five (5) and nine (9) of Plaintiff's Complaint and, therefore, denies the same and puts Plaintiff to its strict burden of proof as to said allegations.

V.

Defendant denies the allegations contained in paragraphs six (6), seven (7) and eight (8) of Plaintiff's Complaint and puts Plaintiff to its strict burden of proof as to said allegations.

VI.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred by the various financial risks that Plaintiff assumed in issuing credit cards to various individuals, including the Defendant.

**THIRD AFFIRMATIVE DEFENSE**

Defendant hereby reserves all other defenses that may be applicable and available to him under Bankruptcy Rules 7008 and 7012.

WHEREFORE, Defendant respectfully requests the Court to dismiss Plaintiff's Complaint in its entirety, to order the debt to Plaintiff as being discharged, to make a finding that Plaintiff's position is not substantially justified per 11 U.S.C. § 523(d) and given the extant case law in the District of Minnesota and to award him his costs and reasonable attorneys fees as

against Plaintiff per 11 U.S.C. § 523(d).

Dated: this 8<sup>TH</sup> day of April, 2004.

**ESKENS, GIBSON & BEHM, CHTD.**

/s/ Stephen J. Behm  
Stephen J. Behm, #263758  
3 Civic Center Plaza, Suite 409  
P.O. Box 1056  
Mankato, MN 56002-1056  
(507) 345-5500

**COUNTER-CLAIM**

Defendant, for his Counter-Claim against Plaintiff, respectfully states, alleges and affirms to the Court as follows:

1. Plaintiff's claim is not substantially justified as per 11 U.S.C. § 523(d);
2. Defendant is entitled to his attorneys fees, costs and disbursements as against Plaintiff.

WHEREFORE, Defendant prays for an order granting relief as requested in said Counter-Claim.

Dated: this 8<sup>TH</sup> day of April, 2004.

**ESKENS, GIBSON & BEHM, CHTD.**

/s/ Stephen J. Behm  
Stephen J. Behm, #263758  
115 East Hickory Street, Suite 200  
P.O. Box 1056  
Mankato, MN 56002-1056  
(507) 345-5500

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**AFFIDAVIT OF SERVICE  
BY MAIL**

PAUL BRIAN MORTENSEN,


DEFENDANT(S).

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I, Stephen J. Behm, attorney with Eskens, Gibson & Behm Law Firm, Chtd., 115 East Hickory Street, Suite 200, P.O. Box 1056, Mankato, MN 56002-1056, declare under penalty of perjury that on April 8, 2004, I mailed copies of the attached **Answer and Counter Claim** by first class mail postage prepaid to each entity named below at the addresses stated below for each entity.

David Jon Hoiland, Attorney at Law, 120 South Sixth Street, Suite 1100, Minneapolis, MN 55402.

Paul Mortensen, 700 Harbor Lane, Plymouth, MN 55447.

  
Stephen J. Behm

Subscribed to and sworn before me  
this 8<sup>th</sup> day of April, 2004.

  
Notary Public

